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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

In re T.H., a Person Coming Under the
Juvenile Court Law.

B199790

THE PEOPLE,

(Los Angeles County
Super. Ct. No. MJ15078)

Plaintiff and Respondent,

v.

T.H.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Robin Kesler, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed in part and remanded with directions.

Tonja R. Torres, under appointment by Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Victoria B. Wilson and Erika D. Jackson, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court sustained a petition filed pursuant to Welfare and Institutions Code section 602,¹ declaring appellant T.H. a ward of the court and ordering him home on probation. T.H. and the Attorney General agree that certain conditions of probation require modification. T.H. also contends that the juvenile court should not have set a maximum term of confinement. We modify and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 19, 2006, T.H., his adult brother Travis, and Travis's girlfriend went to a Dillard's department store. A Dillard's loss prevention officer watched on a security camera as Travis picked up two pairs of gloves. T.H. selected a shirt and gave it to his brother. Travis took the shirt, moved behind a fixture that obstructed the camera's view and reappeared without the shirt. The three then left the store without paying for any merchandise. A loss prevention officer followed the group into the parking lot and approached them as they were getting into a car. The officer demanded that Travis get out of the car and return the merchandise. Travis threw the gloves to the ground. The officer tried to pull Travis out of the car. T.H. intervened and a second loss prevention officer arrived. Fisticuffs ensued between Travis, T.H., and the two loss prevention officers. Eventually Travis and T.H. were knocked to the ground and handcuffed. The loss prevention officers retrieved two pairs of gloves and a shirt near the car.

A petition was filed under section 602 alleging T.H. committed two counts of second degree robbery in violation of Penal Code section 211. The juvenile court found T.H. committed one count of second degree robbery and further found the offense was a felony. At the disposition hearing, the court declared T.H. a ward of the court under section 602 and set a maximum confinement term of five years. The court placed T.H. home on probation with various conditions.

¹

All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

DISCUSSION

T.H. contends that two of the probation conditions were unconstitutionally vague: (1) the condition that T.H. not “remain in the presence of any unlawfully armed person” (probation condition 16); and (2) the condition that T.H. “stay away from places where users congregate” (probation condition 21). The Attorney General agrees, as do we. Probation conditions are unconstitutionally vague if they fail to give fair warning of what is required. (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.) This includes conditions that limit a probationer’s associations without also requiring that the probationer know a particular association violates his probation. (*Id.* at pp. 890-891.) In this case, T.H. could violate probation conditions 16 and 21 based on an accidental encounter, or by unwittingly going to a place where narcotics users gather. As pronounced by the juvenile court and stated in the minute order, the two conditions do not pass constitutional muster. Both conditions must therefore be amended to reflect a knowledge requirement.

T.H. also points out a discrepancy between the court’s oral pronouncement of probation condition 15 and the subsequent minute order. At the disposition hearing, the juvenile court ordered that T.H. not “associate with anyone you know to be disapproved by your parent or your probation officer right now.” The minute order omitted the knowledge requirement. The condition must be amended to reflect the juvenile court’s pronouncement of the probation condition. (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 891.)

Finally, T.H. contends that the juvenile court should not have set a maximum term of confinement and the term should therefore be stricken. Respondent agrees that the juvenile court was not required to set a maximum term and that it has no legal effect. However, respondent disagrees that the term must be stricken.

Section 726, subdivision (c) generally requires that the juvenile court specify a maximum term of confinement that cannot exceed the time of confinement allowable for an adult convicted of the same offense. However when a minor is not removed from the physical custody of his parents, section 726 subdivision (c) does not apply. (*In re Matthew A.* (2008) 165 Cal.App.4th 537; 541; *In re Ali A.* (2006) 139 Cal.App.4th 569, 573-574.) In such cases a juvenile court’s order setting a maximum term of confinement

has no legal effect. Here, the parties agree that the juvenile court's order setting a maximum term of confinement has no legal effect. We see no reason to deprive T.H. of an accurate dispositional order.

DISPOSITION

The matter is remanded to the juvenile court with instructions to modify probation condition number 16 to read as follows: "Do not have any dangerous weapon or deadly weapon in your possession, or knowingly remain in the presence of any unlawfully armed person"; modify probation condition number 21 to read as follows: "Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where you know users congregate"; modify probation condition number 15 to reflect the juvenile court's oral pronouncement of the condition at the disposition hearing; and to delete any reference to a maximum term of confinement. In all other respects the disposition orders and judgment are affirmed.

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BIGELOW, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.